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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,573	11/17/2000	Kil Yong Sung	00-11-1450	8934

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/716,573

Applicant(s)

SUNG, KIL YONG

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 5/8/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 5/8/02 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by *Tasi* (US # 5,531,592).

Tasi discloses in Figures 1-3 a lighter substantially as described including a lighter housing (1 and 5), a fuel tank (see Fig. 1) located within the housing, a piezoelectric unit (21) for

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creating a spark, a trigger (22) slidably mounted in the lighter housing for activating the piezoelectric unit, the trigger having a stopper tab/flange (221), a fuel-release valve urged into a closed position, a spring mechanism (34 and 35) having a non-operational position, an operational position, a first portion (top end of 34), and a second portion (bottom end of 34), wherein the first portion locks the trigger when the spring mechanism is in the non-operational position, and the second portion opens the fuel-release valve when the spring mechanism is in the operational position (see col. 2, lines 19-44), and a safety button (36) moving the spring mechanism from the non-operational position to the operational position.

4. Claims 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by *Huang* (US # 6,050,810).

Huang discloses in Figures 1-4 a lighter substantially as described in applicant's claims 18 and 19 including a lighter housing, a fuel tank, a piezoelectric unit, a trigger; slidably mounted, having a stopper tab, and moving along a first axis, a fuel release valve/plug (31) being spring loaded (32) and capable of movement along a second axis parallel to the first axis, a spring mechanism (62, 64, 50, and 70) having a non-operational position, an operational position, a first portion (70) and a second portion (50), wherein the first portion (70) locks the trigger when the spring mechanism is in the non-operational position (see Fig. 2), and the second portion (50) opens the valve/plug when the spring mechanism is in the operational position (see Fig. 4), and a safety button/knob (60) for moving the spring mechanism from the non-operational position to the operational position) wherein the safety button/knob rotationally moves the spring mechanism (see pivotal movement of latch (70) by extension (64)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Alternatively, claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Tasi*, as applied to claim 16 above, and further in view of *Bruhn* (US # 4,610,624).

Tasi discloses all the limitations of claims 18 except that the fuel release valve is capable of movement on an axis parallel to the axis of movement of the trigger.

Bruhn teaches a lighter having a trigger (11) and valve (7) arranged such that the trigger moves along a first axis that is parallel to the movement of the valve along a second axis.

Therefore, in regard to claim 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the lighter of *Tasi* to incorporate the trigger and valve arrangement for parallel movement as taught by *Bruhn* as it is well known in the art that lighter may take varied shapes (see *Bruhn*, col. 1, lines 9-10) such as having an elongated housing and elongated nozzle with the trigger axis and valve axis are parallel. This lighter shape, trigger arrangement, and valve arrangement allow a user to ignite a cooker, grill or open fire while maintaining the user's hand a safe distance from the flame (see *Bruhn*, col. 1, lines 40-44 and 61-64) and this shape ensures easy, rapid operation and an esthetic appearance (see *Bruhn*, col. 2, lines 14-22).

Response to Arguments

7. Applicant's arguments filed 5/8/02 have been fully considered but they are not persuasive. Applicant contends on pages 15-17 that the pressure rod (34) and coil spring (35) of *Tasi* do not constitute a spring mechanism as claimed because the pressure rod and coil spring are separate structures. It is noted by the Examiner that the phrase "spring mechanism" does not appear in applicant's specification and is not defined to refer only to a single structure. As noted in section 3 above, the pressure rod (34) and mounted a coil spring (35) of *Tasi* functions for the same purpose as the spring mechanism as claimed by Applicant in biasing a member into a position to prevent movement of a trigger. A person of ordinary skill in the art would reasonably interpret the pressure rod and coil spring structure to constitute a spring mechanism as claimed.

Further, while applicant's specification contains no support for a definition of a "spring mechanism" as a single structure, applicant argues on pages 12-13, section 3 of the response filed 5/28/02 that the spring mechanism of applicant and that of *Huang* are not patentably distinct. However, it is noted that the latch (70) of *Huang* is not spring biased, thus, any "spring mechanism" of the *Huang* patent would necessarily include the spring (62) mounted to knob (60) to which is mounted extension (64) which engages pivotal latch (70). As seen in Figs. 2-4 of *Huang*, the spring (62), extension (64) and the pivotal latch (70) are completely separate structures. Therefore, applicant's position that, in the *Tasi* reference, the separate pressure rod (34) and coil spring (35), because they are separate structures, do not constitute a "spring mechanism" as claimed, can not be reconciled with the definition of "spring mechanism" as set forth in applicant's argument regarding the *Huang* patent, which contends that the separate

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structures in the form of a spring (62), extension (64) and latch (70), does constitute a "spring mechanism".

Interference

8. Claims 16 and 17 of this application have been asserted by applicant to correspond to claims 1 and 6 of U. S. Patent No. 6,050,810. These claims are not patentable to the applicant because, as noted in section 2 above, the claims are anticipated by the *Tasi* reference.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgment in the interference.

9. Claims 16-19 of this application are asserted by applicant to correspond to claims 1 and 6 of U.S. Patent No. 6,050,810 to *Huang* (hereinafter "*Huang*").

The examiner does not consider these claims to be directed to the same invention as that of *Huang* because the lighter of *Huang* is both structurally and functionally distinct from applicant's lighter.

Huang claims a lighter having a latch (see *Huang* item 70) pivotally secured in a lighter housing which functions to engage a trigger to prevent the trigger from being actuated (see *Huang*, Fig. 1) wherein the latch has a distinct structure in the form of hook (see *Huang*, item 731) to engage the trigger. Applicant claims a spring mechanism (see applicant's item 60) having a first portion for locking a trigger of a lighter (see applicant's item 81) and a second portion (see applicant's item 70) for opening a fuel-release valve. However, applicant does not

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claim, disclose, or suggest a hook associated with any portion of the spring mechanism. The trigger locking latch of *Huang* and the trigger locking mechanism of applicant function in a distinct manner from one another. *Huang's* hook (see *Huang*, item 731) is positioned to allow latch (see *Huang*, item 70) to lock the trigger such that the latch is placed in tension to prevent trigger movement (see *Huang*, Fig. 2) while applicant's first portion (see applicant's item 81) engages the trigger (see applicant's Fig. 1 showing first portion 80 engaging stopper portion 110 mounted on the trigger) such that the first portion is placed in compression. Therefore, the hook structure of *Huang* is critical to his claimed means of preventing trigger actuation, whereas a person of ordinary skill in the art would not be prompted to include such a hook in any portion of applicant's trigger locking mechanism

Further, *Huang* claims in claims 1 and 6 that a plug (see *Huang*, item 31) engaging a valve seat (see *Huang*, item 38) and a knob (see *Huang*, item 60) wherein the knob is slidably received in a housing and both **engages** the plug for disengaging the plug from the valve seat to release a gas flow and **engages** the latch (see *Huang*, item 70) for releasing the hook to allow trigger movement. While applicant also claims a knob/safety button (see applicant's item 120) and plug/valve (see applicant's item 31), applicant's knob/safety button only engages the spring mechanism to move the spring mechanism into an operational and non-operational position whereby the second portion (see applicant's item 70) of the spring mechanism opens the fuel release valve and does not claim or disclose that the knob/safety button engages the plug/valve. Additionally, applicant's claims 16 and 18 do not claim that movement of knob/safety button **releases** the trigger locking portion. Therefore, *Huang's* claimed means for releasing the trigger

and allowing a gas flow are both structurally and functionally distinct from that claimed by applicant.

Accordingly, an interference cannot be initiated based upon these claims.

Double Patenting

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 18 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,186,773.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because though claims 16 and 17 are broader in scope, they are drawn to the same invention as claims 1 and 6 of US # 6,186,773. Further, while the invention of US # 6,186,773 recites "A safety mechanism for a utility lighter", the recitation of the utility lighter structure in the preamble and in the body of the claim defines the invention of these claims to be a combination of a lighter having a safety mechanism, which is the equivalent invention as disclosed in claims 18 and 19 of the present application, now presented with claim limitations defining a broader scope. Additionally, by applicant's own admission (see applicant's response filed 5/28/02, pages 4-6, pages 9-10, and page 12, lines 1-3) the additional limitations incorporated into claims 18 and 19 merely describe inherent functions and are not materially different from claims 16 and 17, which were regarded as being broader in scope but claiming the same invention as claims 1 and 6 of US # 6,186,773 (see Office Action mailed 1/29/02 and part of paper #4).

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. The prior art made or record and not replied upon is considered pertinent to applicant's disclosure. *Saito et al.* is included to further show the state of the art concerning lighters having trigger locking mechanisms and parallel axes of movement for a trigger and a fuel release valve.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

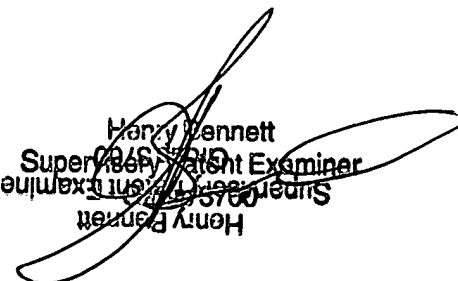
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached at (703) 308-0101. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc



July 18, 2002



Henry Bennett
Supervisory Patent Examiner
Art Unit 3743
09/16/02